

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VICI METRONICS, INC., a Washington corporation, ) No. C 04-0854 SC  
Plaintiff, )  
v. ) ORDER GRANTING  
REAL SENSORS, INC., a California corporation, RAMESH CHAND, an individual, JESUS NAVAREZ, an individual, JITENDRA KUMAR KAPADIA, an individual, ) DEFENDANT RAMESH CHAND'S MOTION TO CONFIRM ARBITRATION AWARD  
Defendants. )  
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**I. Introduction**

Plaintiff VICI Metronics ("VICI") filed the above captioned action against various defendants including its former employee Defendant Ramesh Chand ("Chand"). On August 27, 2004, the Court compelled arbitration between Chand and VICI according to the terms of the employment agreement between VICI and Chand ("Employment Agreement") and stayed the action before it. See Docket No. 49. Chand now moves the Court to confirm the resulting arbitration award; VICI, in opposition, moves the Court to vacate or, in the alternative, modify the award. For the following reasons the Court hereby GRANTS Chand's Motion to Confirm the

1 Award and DENIES VICI's Motion to Vacate or Modify the Award.  
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3 **II. BACKGROUND**

4 The Employment Agreement's arbitration clause ("Arbitration  
5 Clause") states:

6 Any controversy or claim arising out of or relating to  
7 this agreement, or the breach thereof, shall be settled  
8 by binding arbitration in accordance with the Commercial  
9 Rules of the American Arbitration Association by a  
single arbitrator to be located in San Francisco,  
California, and judgment upon the award rendered by the  
arbitrator may be entered by any court having  
jurisdiction thereof, and shall not be appealable.  
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11 Townsend Decl. in Sup. Conf., Ex. B at 5.

12 The American Arbitration Association's ("AAA") Commercial  
13 Arbitration Rules and Mediation Procedures, as amended July 1,  
2003, ("Commercial Rules"), state in their relevant section:

14 R-1. Agreement of Parties\*+  
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16 (a)The parties shall be deemed to have made these rules  
17 a part of their arbitration agreement whenever they have  
provided for arbitration by the . . . AAA . . . under  
its Commercial Arbitration Rules. . . . These rules and  
any amendment of them shall apply in the form in effect  
at the time the administrative requirements for a demand  
for arbitration or submission agreement received by the  
AAA. . . .

20 + A dispute arising out of an employer promulgated plan  
21 will be administered under the AAA's National Rules for  
the Resolution of Employment Disputes.

22 Townsend Decl. Opp. Vacate, Ex. B at 7-8. The Commercial Rules  
23 were in effect when VICI initiated arbitration at AAA in November  
24 2004. See Isola Decl., Ex. A; [www.adr.org/sp.asp?id=22440](http://www.adr.org/sp.asp?id=22440).

25 From November 7 to 9, 2005, the AAA, Norman Brand, Esq.  
26 presiding ("Arbitrator"), held arbitration hearings in the case.

27 Townsend Decl. in Sup. Conf., at 1-2. Prior to the hearing, the  
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1 AAA designated the case as an "employment" case and requested that  
2 VICI make the appropriate payments associated with such a  
3 designation. Isola Decl., at 2-3. VICI disputed this designation  
4 and a series of communications between VICI and the AAA ensued.  
5 Id. Finally, on November 4, 2005, AAA Case Manager Jose Ibarra  
6 sent a letter to parties informing them inter alia that the AAA's  
7 "final decision is that this dispute arises from an employer plan,  
8 and the National Rules for the Resolution of Employment Disputes  
9 and fee schedule shall apply." Id., Ex D at 32.

10 On May 30, 2006, the Arbitrator issued his final award  
11 ("Award"), which incorporated prior interim awards, awarding Chand  
12 \$9,230.77 with statutory interest of 10% per annum from August 4,  
13 2002 for his unpaid severance pay counterclaim and \$19,050 in  
14 attorneys fees, and ordered VICI to pay the entire amount of AAA  
15 administrative fees, \$2,254.05, and the Arbitrator's compensation,  
16 \$34,200.00. Townsend Decl. in Sup. Conf., Ex. A at 10, 30.

17 On August 4, 2006, Chand moved the Court to confirm the  
18 Award. See Mot. to Conf. VICI responded by moving the Court to  
19 vacate the award or, in the alternative, modify it. See Mot. to  
20 Vacate.

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22 **III. LEGAL STANDARD**

23 A party seeking to confirm an arbitration award may, pursuant  
24 to Section 9 of the Federal Arbitration Act ("FAA"), may make an  
25 application for confirmation of the award in the federal court of  
26 the district in which the award was made, 9 U.S.C. § 9, assuming  
27 that there exists an independent basis for that court's subject

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1 matter jurisdiction. Southland Corp. v. Keating, 465 U.S. 1, 15  
2 n.9 (1984). Subject to the same conditions, a party may make an  
3 application for an order vacating or modifying an arbitration  
4 award. 9 U.S.C. §§ 10, 11.

5 Once brought before a federal court, review of an arbitration  
6 decision is "both limited and highly deferential." Coutee v.  
7 Barington Capital Group, L.P., 336 F.3d 1128, 1133 (9th Cir.  
8 2003)(internal quotation omitted). A federal court may modify or  
9 vacate an arbitration award "only if the conduct of the  
10 arbitrators violated the Federal Arbitration Act (FAA), or if the  
11 award itself is completely irrational or constitutes manifest  
12 disregard of the law." Id. (internal quotations omitted)(emphasis  
13 added).

14 The FAA describes four grounds for vacation: "(1) where the  
15 award was procured by corruption, fraud, or undue means; (2) where  
16 there was evident partiality or corruption in the arbitrators, or  
17 either of them; (3) where the arbitrators were guilty of  
18 misconduct on refusing to postpone the hearing, upon sufficient  
19 cause shown, or refusing to hear evidence pertinent and material  
20 to the controversy, or for any other misbehavior by which the  
21 rights of any party have been prejudiced; or (4) where the  
22 arbitrators exceeded their powers, or so imperfectly executed them  
23 that a mutual, final, and definite award upon the subject matter  
24 submitted was not made." 9 U.S.C. § 10.

25 A federal court may modify an arbitration award of Section 11  
26 of the FAA: "(a) [w]here there was an evident material  
27 miscalculation of figures or an evident material mistake in the  
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1 description, thing, or property referred to in the award[;] (b)  
2 [w]here the arbitrators have awarded upon a matter not submitted  
3 to them, unless it is a matter not affecting the merits of the  
4 decision upon the matter submitted[; or] (c) [w]here the award is  
5 imperfect in matter of form not affecting the mertis of the  
6 controversy." 9 U.S.C. § 11.

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8 **IV. DISCUSSION**

9 VICI makes essentially one argument for vacating or modifying  
10 the Award: the Arbitration Clause called for arbitration under  
11 the Commercial Rules, but the Arbitrator applied the Employment  
12 Rules. See Mot. Vacate. VICI places this argument in a variety  
13 of packages shaped by federal and California law in the hopes that  
14 the Court will accept one. The federal law-based arguments are:  
15 (1) in deciding to apply the Employment Rules, the Arbitrator  
16 exceeded his authority, see id., at 7-9; (2) the final award is  
17 irrational, because it is not clear which rules are being applied,  
18 id. at 9; (3) the award involves a manifest disregard for the law,  
19 because the Arbitration Clause provides that the Commercial Rules  
20 should apply, but the Arbitrator instead applied the Employment  
21 rules. Id. at 10-11. None of these arguments purportedly based  
22 on federal law are availing for the reasons stated herein.<sup>1</sup>

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25 <sup>1</sup>The California law-based arguments which VICI attempts to  
hang on this claim are irrelevant to the Court's evaluation of  
26 VICI's Motion to Vacate, which is governed solely by federal law.  
G.C. and K.B. Investments, Inc. v. Wilson, 326 F.3d 1096, 1105 (9th  
27 Cir. 2003).

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1           **A. The Arbitrator Did Not Exceed His Authority**

2           VICI's claim that the Arbitrator exceeded his authority by  
3 applying the Employment Rules to the dispute is unavailing. It is  
4 a basic tenet of arbitration law that parties have the right to  
5 arbitrate their dispute according to the terms of their  
6 arbitration agreement. Western Employer Ins. Co. v. Jefferies &  
7 Co., Inc., 958 F.2d 258, 261 (9th Cir. 1992). The Arbitration  
8 Clause provides that disputes between the parties are to be  
9 "settled by binding arbitration in accordance with the Commercial  
10 Rules of the American Arbitration Association." Townsend Decl. in  
11 Sup. Conf., Ex. B at 5. Those rules provide that "[a] dispute  
12 arising out of an employer promulgated plan will be administered  
13 under the AAA's National Rules for the Resolution of Employment  
14 Disputes." Townsend Decl. Opp. Vacate, Ex. B at 8. The AAA  
15 determined that the dispute between the parties arose out of an  
16 employer promulgated plan. See Isola Decl., Ex. D at 32. Thus,  
17 the Arbitrator's decision to apply the Employment Rules was in  
18 accordance with the Commercial Rules and therefore in accordance  
19 with the Arbitration Clause providing for arbitration according to  
20 the Commercial Rules. It is, honestly, difficult to understand  
21 how VICI can complain otherwise.

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23           **B. The Final Award is Not Completely Irrational**

24           VICI also argues that the Final Award is irrational because,  
25 according to VICI, the Arbitrator was not always completely clear  
26 which arbitration rules of the AAA he applied in three of the  
27 decisions he issued ("Three Decisions"). See Mem. Opp. to Conf. at  
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1       9. This argument is even more unavailing. To vacate an  
2 arbitration award on this ground the award must be "completely  
3 irrational," not a bit confusing or sort of unclear. Coutee, 336  
4 F.3d at 1133. More precisely, an award is completely irrational  
5 if "the arbitrator's interpretation cannot be rationally derived"  
6 from the arbitration agreement on which it is purportedly based.  
7 Swift Industries, Inc. v. Botany Industries, Inc., 466 F.2d 1125,  
8 1131 (3rd Cir. 1972); see French v. Merrill Lynch, Pierce, Fenner  
9 & Smith, Inc., 784 F.2d 902, 906 (9th Cir. 1986).

10       VICI's complaint about the Arbitrator's choice of wording in  
11 the three decisions goes to the decisions' clarity not their  
12 rationality. See Mem. Opp. to Conf. at 9. And each of the  
13 complained of descriptions of applicable rules are reasonably  
14 deriveable from the Arbitration Clause's instruction that the  
15 arbitration be conducted according to the Commercial Rules, which,  
16 as discussed above, the arbitration was. There are no grounds for  
17 vacating the Award as completely irrational.

18           **C. The Award Does Not Involve Any Manifest Disregard of Law**

19       If possible, VICI's argument that the Arbitrator's decision  
20 to apply the Employment Rules constituted a manifest disregard of  
21 law is even more unavailing than its two other arguments.  
22 "'Manifest disregard' means something more than just an error in  
23 the law or a failure on the part of the arbitrators to understand  
24 or apply the law." Michigan Mut. Ins. Co. v. Unigard Sec. Ins. Co., 44 F.3d 826, 832 (9th Cir. 1995). Rather, it occurs only  
25 when an arbitrator "recognized the applicable law and then ignored  
26 it." Id.

1           VICI's argument purportedly based on these grounds simply  
2 rehashes its flawed argument about the scope of the Arbitrator's  
3 authority: by applying the Employment Rules, the Arbitrator  
4 ignored the clear law which requires him to conduct the  
5 arbitration according to the terms of the arbitration clause under  
6 which the arbitration is constituted. Mem. Opp. Conf. at 10-11.  
7 In the first place, this argument fails because, as discussed  
8 above, the Arbitrator's decision to apply the Employment Rules was  
9 completely proper under the law. However, even assuming that the  
10 Arbitrator's decision to apply the Employment Rules was incorrect,  
11 which it wasn't, it still would only constitute an error of law,  
12 not a manifest disregard of it, and so not grounds for the Award's  
13 vacation.

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15 **V. CONCLUSION**

16           For the foregoing reasons, the Court DENIES VICI's Motion to  
17 Vacate the Award and GRANTS Chand's Motion to Confirm the Award.  
18 The Award is hereby CONFIRMED.

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20           IT IS SO ORDERED.

21           Dated: September 29, 2006

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24           UNITED STATES DISTRICT JUDGE

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